

REMARKS/ARGUMENTS

Claims 1, 3-12, and 14-19 are pending in the present application. Claims 2 and 13 have been cancelled. Claims 1, 11, 12, and 19 are independent.

Allowable Subject Matter

Applicants appreciate the Examiner's indication that claims 2, 3, 11, 13, and 19 recite allowable subject matter and would be allowed if rewritten into independent form including all of the features of the base claim and any intervening claims.

Applicants have accepted the Examiner's determination of allowability. Specifically, the allowable features of claims 2 and 13 have been added to independent claims 1 and 12, respectively. Furthermore, claim 19 has been rewritten into independent form including the features of base claim 12 with there being no intervening claim.

With respect to claim 11, this claim has also been rewritten into independent form including the features of base claim 1. The features of intervening claim 10, however, have not been added to claim 11 for the following reasons. First of all, it is asserted that the features of claim 10 are not necessary for the patentability of claim 11. This is particularly true because claim 10 recites a rather different feature, namely a

filter operable to extract the unassigned portion of the wavelength range while the allowable feature of claim 11 is directed to the first and second fibers which are respectively configured to carry unprotected traffic over the unassigned portion. The filter feature of claim 10 does not tie in with, cooperate or otherwise interact with the allowable features of claim 11.

It is respectfully submitted that claim 11 actually contained a typographical error in its dependency and should have depended from claim 1 instead of claim 10. This is apparent because the features of claim 11 do not depend in any fashion upon the antecedent basis or substantive features of claim 10. Applicants respectfully submit that it is sufficient to add the features of base claim 1 to claim 11 for patentability.

Yet another reason may be found by comparing allowable claim 11 with allowable claim 19 which has no intervening claim.

Other Claim Amendments

The other claim amendments are merely for the purpose of correcting claim dependencies and also to correct an inadvertent error in claim 12. The second allocating step in claim 12 should have referred to the first fiber rather than the second fiber when allocating the second set of wavelength channels as both

protection wavelength capacity and working wavelength capacity. Even a cursory examination of claim 12 would reveal that there was a typographical error in claim 12 and that the amendment is merely to correct this inadvertent typographical error.

Applicants respectfully submit that no new issue has been raised by these other amendments including the ones to claims 12 and 19. The typographical errors that were present in these claims existed prior to the Final Office Action and should have been caught by both the Examiner and Applicants' representative before the final rejection was made. Unfortunately, this is not the case but the amendments above do correct this situation before the expected patent grants.

Art Rejection

Claims 1, 4-10, 12, and 14-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Thompson (USP 6,249,510) in view of Milton et al. (USP 6,084,694). This rejection is respectfully traversed.

As explained above, all of the claims have now been clearly placed into condition for allowance by accepting the Examiner's determination of allowability. These amendments also clearly render the art rejection moot. Therefore, Applicants respectfully request reconsideration and withdrawal thereof.

Conclusion

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider the outstanding rejections and issue a Notice of Allowance in the present application.

Should the Examiner believe that any outstanding matters remain in the present application, the Examiner is respectfully requested to contact Michael R. Cammarata (Reg. No. 39,491) at the telephone number of the undersigned to discuss the present application in an effort to expedite prosecution.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
Michael R. Cammarata, #39,341

MRC/kpc

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000